APPENDIX A

(Opinion)

United States Court of Appeals
For the Eighth Circuit

No. 20,604

William F. Jordan and William A. Rogers, on Behalf of Themselves and All Others Similarly Situated,

Appellants,

v.

Montgomery Ward & Co., Incorporated,

Appellee.

Appeal from the United States District Court for the District of Minnesota.

[May 3, 1971.]

Before MATTHES, Chief Judge, VAN OOSTERHOUT and LAY, Circuit Judges.

MATTHES, Chief Judge.

This interlocutory appeal, pursuant to 28 U.S.C. §1292 (b), is focused upon the recently enacted Federal Truth in Lending Act, 82 Stat. 146 et seq. (1968) (15 U.S.C. §1601 et seq.) At issue is the propriety of the court's action in striking, on motion of the appellee, subpara-

graphs *a*, *c*, and *d* of paragraph 7 of Count I of appellants' complaint.[1]

In September of 1969 appellant Rogers purchased a stereo from appellee through its catalogue which contained the statement, "NO MONTHLY PAYMENTS TILL FEBRUARY *when you order stereo on Credit at Wards*—see *page* 3." Page 3 of the catalogue set forth in large capital letters, "NO MONTHLY PAYMENT TILL FEBRUARY ON APPLIANCES AND HOME FURNISHINGS ORDERED ON CREDIT FROM ANY WARDS CATALOG OR STORE." In smaller type on the same page the following statement is found, "If your order is being added to an account that is already open, there will be no monthly payment *increase* till February 1970."

In January, 1970, appellant Jordan purchased merchandise from appellee's "Great 1970 Winter Sale" catalogue which contained this statement conspicuously located in circular presentation, "PRE-SEASON SPECIAL *no monthly payments till June.*"

The appellants subsequently learned that the finance charges on these purchases were imposed from the date of the purchase rather than from the date payment was due, February and June respectively, as indicated by the catalogue. Appellants were thereby motivated to sue appellee on the theory that they were induced to make the purchases on credit because of the language of the alleged non-complying advertisement and were entitled to prosecute this private claim for relief pursuant to the civil liability provisions of the Truth in Lending Act.

The material part of Count I alleged that the jurisdiction of the court was founded on section 130 of the Act,

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[1] All of Count II alleging violations of a Minnesota statute was stricken. The propriety of this action is not an issue on appeal.

15 U.S.C. §1640. The focal part of the complaint is paragraph 7:

> "7. While so engaged in advertising for sales, *making credit sales*, and sending periodic statements to plaintiffs [appellants] and the members of their class which plaintiffs [appellants] represent, defendant [appellee] has violated and continues to violate the Act of Congress of May 29, 1968, 82 Stat. 146 et seq. (15 U.S.C.A. Section 1601, et seq.), and the Regulations which were adopted pursuant to said Act, and which are contained in Regulation Z, 12 CFR 226, in the following respects, among others:
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> "a. By failing to disclose that any finance charge is being imposed on items offered for sale and all as required by 12 CFR 226.10;
>
> "b. By failing to disclose and express its applicable minimum finance charge in excess of fifty (50) cents in terms of an annual percentage rate in accordance with the requirements of Regulation Z, 12 CFR 226.5 (a) (3) (i) and Section 127 of the Act . . .;
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> "c. By stating that no payments whatsoever are required until some future date, without disclosing the imposition of a finance charge thereon;
>
> "d. By continuing numerous pages of advertisements of products and prices without any reference to the imposition of finance charges;
>
> "e. By failing to disclose on its periodic statements that the periodic rate exceeds 1.5% per month and an annual percentage rate of eighteen per cent (18%) because credit is not given for payments made and returns made during the billing cycle; . . . ." [Emphasis added]

Appellee challenged the complaint by motion and alleged that subparagraphs *a, c* and *d* of Paragraph 7 related only to credit advertising, were legally irrelevant to a private action, were not within the subject matter jurisdiction of the court, and should be stricken under Rule 12(f), Fed. R.Civ.P. The trial court granted the motion, and thereafter filed the requisite order for a § 1292(b) appeal, which we granted.

In its supporting memorandum opinion, the district court noted that the Truth in Lending Act deals separately with credit transactions and credit advertising. It concluded that the language and the legislative history of the Act supported the conclusion that Chapter 2, section 130 (15 U.S.C. § 1640) was not intended as a grant of jurisdiction to the courts for the purpose of granting relief for violations of the "Credit Advertising" provisions of the Act.

As we view this case in its present posture, the issue to be resolved is whether persons who plead that they were misled by and consummated credit transactions relying on advertisements not complying with the credit advertising provisions of the Act are entitled to maintain an action for civil liability as provided in Chapter 2 of the Act, specifically section 130. Appellants concede, as they must, that a person who merely sees a non-complying advertisement, but does nothing more, has no actionable claim. But they vigorously argue that where a purchase resulting in a credit transaction is made in reliance on the advertisement, the purchaser may maintain an action for civil liability under Chapter 2 of the Act. We disagree.

The Federal Truth in Lending Act is composed of three distinct Chapters:[2] Chapter 1—General Provisions, 15

[2] The Chapters were called "Part A, B, and C" respectively in the United States Code Annotated. The term "part" was also substituted for the term "Chapter" throughout the text of the Act as reproduced in U.S.C.A.

U.S.C. §§ 1601-13; Chapter 2—Credit Transactions, 15 U.S.C. §§ 1631-44; and Chapter 3—Credit Advertising, 15 U.S.C. §§ 1661-65. The language of section 108 (15 U.S.C. § 1607) and the legislative history evinces that Congress intended that the Act be enforced primarily by administrative agencies. However, provision is made for the institution of a civil action by an aggrieved debtor under specific circumstances. See H.R. Rep. No. 1040, 90th Cong., 2d Sess. (1968).[3] Section 130, found in the Credit Transaction Chapter of the Act, provides:

> "(a) Except as otherwise provided in this section, any creditor who fails in connection with any *consumer credit transaction* to disclose to any person any *information required under this chapter* to be disclosed to that person is liable to that person in an amount equal to the sum of
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> (1) twice the amount of the finance charge in connection with the transaction, except that the liability under this paragraph shall not be less than $100 nor greater than $1,000; and
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> (2) in the case of any successful action to enforce the foregoing liability, the costs of the action together with a reasonable attorney's fee as determined by the court.
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> . . . .
>
> "(e) Any action under this section may be brought in any United States district court, or in any other court of competent jurisdiction, within one year from the date of the occurrence of the violation." [Emphasis added]

There is no similar provision in the credit advertising chapter of the Act. In fact it appears that it was the intent of the Congress not to provide private civil relief

[3] Reprinted in 1968 U.S. Code, Cong. & Adm. News, p. 1962.

for violations of the credit advertising provisions. In the section by section analysis of the bill as presented to the House Banking and Currency Committee, the comment on the private civil penalty provision reads as follows:

> "This subsection sets forth civil penalties of double the finance charge with a minimum of $100 and a maximum of $1,000, for failure to comply with section 203 [essentially the provisions presently included in the credit transaction and credit advertising portions of the Act] (*other than the advertising requirements*)." [Emphasis added]

H.R. Rep. 1040 supra. The Report also states:

> "[T]he bill specifically exempts credit advertising from the application of civil penalties. This exemption has been written into the bill by your committee to avoid the possibility that anyone, not a party to an actual transaction, seeing an advertisement not complying with the disclosure requirements of the bill would attempt to seek civil penalties."

Consideration of the above legislative history in conjunction with Section 130 supports our conclusion that this section does not confer original subject matter jurisdiction in the federal courts over a claim of violation of the credit advertising provisions of the Act by private individuals. Rather, authority to enforce compliance with the credit advertising requirements is relegated to administrative agencies as provided in section 108 of the Act, 15 U.S.C. §1607.

Beyond doubt, as appellee recognizes, the civil penalties section creates a statutory remedy and confers jurisdiction on the district courts for actions brought thereunder. But this section is limited in its scope and application. We cannot extend either the ambit of the remedy so created or the jurisdiction of the district courts established by Congress in the Truth in Lending Act. It is well established that courts may not enlarge by construction the

language of a clear and unambiguous statute. *Beattie Investment Co. v. United States,* 101 F.2d 850 (8th Cir. 1939). To hold as appellants urge, would expand the jurisdictional and remedial purview of the civil penalties section past the boundaries of Congressional intent, thereby violating the rule proscribing judicial legislation. *Air Line Stewards and Stewardesses Ass'n, International v. Northwest Airlines, Inc.,* 162 F.Supp. 684 (1958), affd. 267 F.2d 170 (8th Cir.), cert. denied, 361 U.S. 901 (1959).

Subparagraph *a* of Paragraph 7 of the complaint relates only to violations of the disclosure provisions of the credit advertising part of the Act and Regulation Z. Similarly, subparagraph *d* concerns only the matter printed on the pages of appellee's catalogue. The remedy sought by appellants in their complaint and the jurisdiction of the district court to consider their claims is premised *only* upon §130, the civil penalties section, which do not apply to violations of the credit advertising chapter of the Act. Accordingly, we hold that the district court properly struck these subparagraphs from the complaint and affirm the court's order to this extent.

However, we find that subparagraph *c* may be construed as encompassing violations of the credit transaction chapter, which the civil penalties section was designed to remedy. Therefore, we find the district court erred in striking subparagraph *c* of Paragraph 7.

We affirm in part, reverse in part, and remand with directions to the district court to reinstate subparagraph *c* of Paragraph 7 of the complaint.

Costs shall be taxed equally.

A true copy.

Attest:

Clerk, U. S. Court of Appeals, Eighth Circuit.

APPENDIX B

(Decision)

United States District Court
District of Minnesota
Fourth Division

William F. Jordan and William A. Rogers, on Behalf of Themselves and All Others Similarly Situated, and the State of Minnesota, Plaintiffs, vs. Montgomery Ward and Co., Incorporated, Defendant.	Order. No. 4-70-Civ. 145.

Defendant moved * * * to strike, pursuant to Rule 12(f), those portions of Count I, namely subparagraphs a, c and d of paragraph 7, which allege violations of the Credit Advertising provisions of the Truth in Lending Act, * * *.

The Court has heard arguments and examined the memoranda and affidavits submitted for its consideration. On the basis thereof, and on all the exhibits, files, records and proceedings,

It Is Ordered:

* * * * * * *

2. That defendant's motion to strike allegations contained in subparagraphs a, c and d of paragraph 7 of Count I be, and it hereby is, granted.

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September 9, 1970.

/s/ Earl R. Larson
United States District Judge

Memorandum Attached.

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MEMORANDUM

• • • • • • • •

Motion to Strike Portions of the Complaint Alleging Violation of Credit Advertising Provisions of the Truth in Lending Act

Provisions relating to disclosure of charges imposed in connection with sales on credit and provisions dealing with the advertising of credit terms are treated separately in the Truth in Lending Act. The former are contained in Chapter 2, sections 121 through 131 (15 U.S.C.A. 1631-41, 1970 Supp.), while the latter are in Chapter 3, sections 141-145 (15 U.S.C.A. 1661-65, 1970 Supp.).

The only provision creating a private right of action for violations of the Act appears in Chapter 2, section 130 (15 U.S.C.A., § 1640, 1970 Supp.). This section provides for civil liability for any creditor who "in connection with any consumer **credit transaction**" fails to disclose the "information required under this **chapter**."[1] (Emphasis added.) It is noteworthy that Chapter 2 is entitled "Credit Transactions" while Chapter 3 is en-

[1] 15 U.S.C.A. 1640 substitutes "part" for "chapter" in this phrase. That is because Chapters 1, 2, and 3 of the Act have been redesignated as parts A, B, and C, respectively, in U.S.C.A.

titled "Credit Advertising". This implies strongly that the phrase "this chapter" refers to Chapter 2 (Part B in U.S.C.A.; see note 1, *supra*) and does not create a right of action for a violation of Chapter 3 (Part C in U.S.C.A.; see note 1, *supra*). This conclusion is strengthened by examining other provisions of the Act and is legislative history.

Section 180c (15 U.S.C.A., § 1607(c)) vests overall enforcement authority in the Federal Trade Commission with respect to all creditors whose supervision is not specifically committed to other agencies. Most retail merchants, including the defendant in this action, fall within this residual category. A grant of a general nature such as this one alerts this Court to the fact that unless otherwise clearly indicated the remedies for violations of the Act were intended by Congress to be administrative in nature.

The legislative history of the Act lends further credence to defendant's position. The original enactment by the Senate contained no references at all to credit advertising. The House version originally contained a credit advertising provision but mentioned nothing about credit advertising violations, although it did provide civil penalties for wrongful disclosures concerning credit transactions. Later House versions of the bill specifically excluded the credit advertising provisions from application of the civil remedies provision. The final House version was the one adopted by Congress and, as already mentioned, provides separate chapters for "Credit Transactions" and "Credit Advertising" with the private right of action contained in the former. The House report accompanying the Act states:

> "[T]he bill specifically exempts credit advertising from the application of civil penalties. This exemption has been written into the bill by your committee

> to avoid the possibility that anyone, not a party to an actual transaction, seeing an advertisement not complying with the disclosure requirements of the bill would attempt to seek civil penalties." H.R. 1040, 1968, USCCAN, p. 1976.

It is apparent from the foregoing that Chapter 2, section 130 of the Act was not intended as a grant of jurisdiction to this Court for purposes of granting relief for violations of the "Credit Advertising" provisions of the Act. The defendant's motion to strike those portions of the complaint alleging Chapter 3 violations must therefore be granted.

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Earl L. Larson

APPENDIX C

(Statutory Provisions)

15 U. S. C. § 1602 (e):

> The term "credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

15 U. S. C. § 1602 (h):

> The adjective "consumer", used with reference to a credit transaction, characterizes the transaction as one in which the party to whom credit is offered or extended is a natural person, and the money, property, or services which are the subject of the transaction are primarily for personal, family, household, or agricultural purposes.

Section 108 (a), (c) of the Truth in Lending Act [15 U. S. C. § 1607(a), (c)]:

> (a) Compliance with the requirements imposed under this title shall be enforced under
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> (1) section 8 of the Federal Deposit Insurance Act, in the case of
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> (A) national banks, by the Comptroller of the Currency.
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> (B) member banks of the Federal Reserve System (other than national banks), by the Board.
>
> (C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), by the Board of Directors of the Federal Deposit Insurance Corporation.

(2) section 5(d) of the Home Owners' Loan Act of 1933, section 407 of the National Housing Act, and sections 6(i) and 17 of the Federal Home Loan Bank Act, by the Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), in the case of any institution subject to any of those provisions.

(3) the Federal Credit Union Act, by the Director of the Bureau of Federal Credit Unions with respect to any Federal credit union.

(4) the Acts to regulate commerce, by the Interstate Commerce Commission with respect to any common carrier subject to those Acts.

(5) the Federal Aviation Act of 1958, by the Civil Aeronautics Board with respect to any air carrier or foreign air carrier subject to that Act.

(6) the Packers and Stockyards Act, 1921 (except as provided in section 406 of that Act), by the Secretary of Agriculture with respect to any activities subject to that Act.

* * * * * * *

(c) Except to the extent that enforcement of the requirements imposed under this title is specifically committed to some other Government agency under subsection (a), the Federal Trade Commission shall enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement imposed under this title shall be deemed a violation of a requirement imposed under that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the

Commission to enforce compliance by any person with the requirements imposed under this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act.

15 U. S. C. § 1611:

Whoever willfully and knowingly

(1) gives false or inaccurate information or fails to provide information which he is required to disclose under the provisions of this subchapter or any regulation issued thereunder.

• • • • • • • •

(3) otherwise fails to comply with any requirement imposed under this subchapter,

shall be fined not more than $5,000 or imprisoned not more than one year, or both.

15 U.S.C. § 1631 (a):

Each creditor shall disclose clearly and conspicuously, in accordance with the regulations of the Board, to each person to whom consumer credit is extended and upon whom a finance charge is or may be imposed, the information required under this part.

15 U.S.C. § 1637:

(a) Before opening any account under an open end consumer credit plan, the creditor shall disclose to the person to whom credit is to be extended each of the following items, to the extent applicable:

(1) The conditions under which a finance charge may be imposed, including the time period, if any, within which any credit extended may be repaid without incurring a finance charge.

(2) The method of determining the balance upon which a finance charge will be imposed.

(3) The method of determining the amount of the finance charge, including any minimum or fixed amount imposed as a finance charge.

(4) Where one or more periodic rates may be used to compute the finance charge, each such rate, the range of balances to which it is applicable, and the corresponding nominal annual percentage rate determined by multiplying the periodic rate by the number of periods in a year.

(5) If the creditor so elects,

(A) the average effective annual percentage rate of return received from accounts under the plan for a representative period of time; or

(B) whenever circumstances are such that the computation of a rate under subparagraph (A) would not be feasible, or practical, or would be misleading or meaningless, a projected rate of return to be received from accounts under the plan.

The Board shall prescribe regulations, consistent with commonly accepted standards for accounting or statistical procedures, to carry out the purposes of this paragraph.

(6) The conditions under which any other charges may be imposed, and the method by which they will be determined.

(7) The conditions under which the creditor may retain or acquire any security interest in any property to secure the payment of any credit extended under the plan, and a description of the interest or interests which may be so retained or acquired.

(b) The creditor of any account under an open end consumer credit plan shall transmit to the obligor, for each billing cycle at the end of which there is an outstanding balance in that account or with respect to which a finance charge is imposed, a statement setting forth each of the following items to the extent applicable:

(1) The outstanding balance in the account at the beginning of the statement period.

(2) The amount and date of each extension of credit during the period, and, if a purchase was involved, a brief identification (unless previously furnished) of the goods or services purchased.

(3) The total amount credited to the account during the period.

(4) The amount of any finance charge added to the account during the period, itemized to show the amounts, if any, due to the application of percentage rates and the amount, if any, imposed as a minimum or fixed charge.

(5) Where one or more periodic rates may be used to compute the finance charge, each such rate, the range of balances to which it is applicable, and, unless the annual percentage rate (determined under section 1606(a) (2) of this title) is required to be disclosed pursuant to paragraph (6), the corresponding nominal annual percentage rate determined by multiplying the periodic rate by the number of periods in a year.

(6) Where the total finance charge exceeds 50 cents for a monthly or longer billing cycle, or the pro rata part of 50 cents for a billing cycle shorter than monthly, the total finance charge expressed as an annual percentage rate (determined under section 1606 (a) (2) of this title), except that if the finance charge is the sum of two or more products of a rate times a

portion of the balance, the creditor may, in lieu of disclosing a single rate for the total charge, disclose each such rate expressed as an annual percentage rate, and the part of the balance to which it is applicable.

(7) At the election of the creditor, the average effective annual percentage rate of return (or the projected rate) under the plan as prescribed in subsection (a) (5) of this section.

(8) The balance on which the finance charge was computed and a statement of how the balance was determined. If a balance is determined without first deducting all credits during the period, that fact and the amount of such payments shall also be disclosed.

(9) The outstanding balance in the account at the end of the period.

(10) The date by which, or the period (if any) within which, payment must be made to avoid additional finance charges.

(c) In the case of any open end consumer credit plan in existence on July 1, 1969, the items described in subsection (a) of this section, to the extent applicable, shall be disclosed in a notice mailed or delivered to the obligor not later than thirty days after that date.

15 U. S. C. § 1661:

For the purposes of this part, a catalog or other multiple-page advertisement shall be considered a single advertisement if it clearly and conspicuously displays a credit terms table on which the information required to be stated under this part is clearly set forth.

15 U. S. C. § 1663:

No advertisement to aid, promote, or assist directly or indirectly the extension of consumer credit under an open

end credit plan may set forth any of the specific terms of that plan or the appropriate rate determined under section 1637(a) (5) of this title unless it also clearly and conspicuously sets forth all of the following items.

(1) The time period, if any, within which any credit extended may be repaid without incurring a finance charge.

(2) The method of determining the balance upon which a finance charge will be imposed.

(3) The method of determining the amount of the finance charge, including any minimum or fixed amount imposed as a finance charge.

(4) Where periodic rates may be used to compute the finance charge, the periodic rates expressed as annual percentage rates.

(5) Such other or additional information for the advertising of open end credit plans as the Board may by regulation require to provide for adequate comparison of credit costs as between different types of open end credit plans.

APPENDIX D

(Statutory Regulations)

Reg. Z, 12 CFR 226.6 (a), 226.7, 226.10 (a), (b) and (c):

SECTION 226.6—GENERAL DISCLOSURE REQUIREMENTS

(a) **Disclosures; general rule.** The disclosures required to be given by this Part shall be made clearly, conspicuously, in meaningful sequence, in accordance with the further requirements of this section, and at the time and in the terminology prescribed in applicable sections. Where the terms "finance charge" and "annual percentage rate" are required to be used, they shall be printed more conspicuously than other terminology required by this Part. Except with respect to the requirements of § 226.10, all numerical amounts and percentages shall be stated in figures and shall be printed in not less than the equivalent of 10 point type, .075 inch computer type, or elite size typewritten numerals, or shall be legibly handwritten.

SECTION 226.7—OPEN END CREDIT ACCOUNTS—SPECIFIC DISCLOSURES

(a) **Opening new account.** Before the first transaction is made on any open end credit account, the creditor shall disclose to the customer in a single written statement, which the customer may retain, in terminology consistent with the requirements of paragraph (b) of this section, each of the following items, to the extent applicable:

(1) The conditions under which a finance charge may be imposed, including an explanation of the time period, if any, within which any credit extended may be paid without incurring a finance charge.

(2) The method of determining the balance upon which a finance charge may be imposed.

(3) The method of determining the amount of the finance charge, including the method of determining any minimum, fixed, check service, transaction, activity, or similar charge, which may be imposed as a finance charge.

(4) Where one or more periodic rates may be used to compute the finance charge, each such rate, the range of balances to which it is applicable, and the corresponding annual percentage rate determined by multiplying the periodic rate by the number of periods in a year.

(5) If the creditor so elects, the Comparative Index of Credit Cost in accordance with § 226.11.

(6) The conditions under which any other charges may be imposed, and the method by which they will be determined.

(7) The conditions under which the creditor may retain or acquire any security interest in any property to secure the payment of any credit extended on the account, and a description or identification of the type of the interest or interests which may be so retained or acquired.

(8) The minimum periodic payment required.

(b) **Periodic statements required.** Except in the case of an account which the creditor deems to be uncollectable or with respect to which delinquency collection procedures have been instituted, the creditor of any open end credit account shall mail or deliver to the customer, for each billing cycle at the end of which there is an outstanding debit balance in excess of $1 in that account or with respect to which a finance charge is imposed, a statement or statements which the customer may retain, setting forth in accordance with paragraph (c) of this section each of the following items to the extent applicable:

(1) The outstanding balance in the account at the beginning of the billing cycle, using the term "previous balance."

(2) The amount and date of each extension of credit or the date such extension of credit is debited to the account during the billing cycle and, unless previously furnished, a brief identification[7] of any goods or services purchased or other extension of credit.

(3) The amounts credited to the account during the billing cycle for payments, using the term "payments," and for other credits including returns, rebates of finance charges, and adjustments, using the term "credits," and unless previously furnished, a brief identification[8] of each of the items included in such other credits.

(4) The amount of any finance charge, using the term "finance charge," debited to the account during the billing cycle, itemized and identified to show the amounts, if any, due to the application of periodic rates and the amount of any other charge included in the finance charge, such as a minimum, fixed, check service, transaction, activity, or similar charge,[9] using appropriate descriptive terminology.

(5) Each periodic rate, using the term "periodic rate" (or "rates"), that may be used to compute the finance

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[7] Identification may be made on an accompanying slip or by symbol relating to an identification list printed on the statement.

[8] Identification may be made on an accompanying slip or by symbol relating to an identification list printed on the statement.

[9] These charges include any charges imposed by the creditor for the issuance, payment, or handling of checks, for account maintenance or otherwise, to the extent that such charges exceed any similar charges the customer is required to pay when an account is not being used to extend credit.

charge (whether or not applied during the billing cycle), and the range of balances to which it is applicable.

(6) The annual percentage rate or rates determined under § 226.5(a), using the term "annual percentage rate" (or "rates"), and, where there is more than one rate, the amount of the balance to which each rate is applicable. Where the creditor of the open end credit account imposes finance charges with respect to specific transactions during the billing cycle, such charges shall be combined with all other finance charges imposed during the billing cycle, and the annual percentage rate to be disclosed shall be determined by:

(i) Dividing the sum of all the finance charges imposed during the billing cycle by the sum of the balances to which the periodic rates apply (or by the average of daily balances if a daily periodic rate is used), plus the sum of the amounts financed to which the specific transaction charges apply, and

(ii) Multiplying the quotient (expressed as a percentage) by the number of billing cycles in a year.

(7) If the creditor so elects, the Comparative Index of Credit Cost in accordance with § 226.11.

(8) The balance on which the finance charge was computed, and a statement of how that balance was determined. If the balance is determined without first deducting all credits during the billing cycle, that fact and the amount of such credits shall also be disclosed.

(9) The closing date of the billing cycle and the outstanding balance in the account on that date, using the term "new balance," accompanied by the statement of the date by which, or the period, if any, within which, payment must be made to avoid additional finance charges.

(c) **Location of disclosures.** The disclosures required by paragraph (b) of this section shall be made on the face of the periodic statement, on its reverse side, or on the periodic statement supplemented by separate statement forms provided they are enclosed together and delivered to the customer at the same time, and further provided that

(1) The disclosure required by paragraph (b)(1) of this section, the amounts or respective totals of the amounts required to be disclosed under paragraph (b)(2), (3), and (4) of this section, and the disclosure required under paragraph (b)(6) and (9) of this section shall appear on the face of the periodic statement. If the amounts and dates of the charges and credits required to be disclosed under paragraph (b)(2) and (3) of this section are not itemized on the face or reverse side of the periodic statement, they shall be disclosed on a separate statement or separate slips which shall accompany the periodic statement and identify each charge and credit and show the date and amount thereof. If the disclosures required under paragraph (b)(4) are not itemized on the face or reverse side of the periodic statement, they shall be disclosed on a separate statement which shall accompany the periodic statement.

(2) The disclosures required by paragraph (b)(5) and (6) of this section and a reference to the amounts required to be disclosed under paragraph (b)(4) and (8) of this section, if not disclosed together on the face or the reverse side of the periodic statement, shall appear together on the face of a single supplemental statement which shall accompany the periodic statement.

(3) The face of the periodic statement shall contain one of the following notices, as applicable: "NOTICE: See reverse side for important information" or "NOTICE: See accompanying statement(s) for important informa-

tion" or "NOTICE: See reverse side and accompanying statement(s) for important information;" and

(4) The disclosures shall not be separated so as to confuse or mislead the customer or obscure or detract attention from the information required to be disclosed.

(d) **Finance charge imposed at time of transaction.** Any creditor, other than the creditor of the open end credit account, who imposes a finance charge at the time of honoring a customer's credit card, any other device, or form of identification for a purchase of property or services or for a cash advance to be debited to the customer's open end credit account shall make the disclosures required under paragraphs (b)(2) and (d) of § 226.8, *Credit other than open end—specific disclosures,* at the time of that transaction, and the annual percentage rate to be disclosed shall be determined by dividing the amount of the finance charge by the amount financed and multiplying the quotient (expressed as a percentage) by 12. If disclosure is made under this paragraph, the creditor of the open end credit account need make no further disclosure with respect to the finance charge on that transaction.

(e) **Change in terms.** If any change is to be made in terms of an open end credit account plan previously disclosed to the customer, the creditor shall mail or deliver to the customer written disclosure of such proposed change not less than 30 days prior to the effective date of such change or 30 days prior to the beginning of the billing cycle within which such change will become effective, whichever is the earlier date.

(f) **Open end credit accounts existing on July 1, 1969.** In the case of any open end credit account in existence and in which a balance remains unpaid on July 1, 1969, and which balance is deemed to be collectible and not subject to delinquency collection procedures, the items described

in paragraph (a) of this section, to the extent applicable, shall be disclosed in a notice mailed or delivered to the customer not later than July 31, 1969. If a customer subsequently utilizes such an account in existence on July 1, 1969, in which no balance remained unpaid on that date, and a notice required by paragraph (a) of this section has not previously been furnished that customer, then such notice shall be mailed or delivered to that customer before or with the next billing on that account.

SECTION 226.10—ADVERTISING CREDIT TERMS

(a) **General rule.** No advertisement to aid, promote, or assist directly or indirectly any extension of credit may state

(1) That a specific amount of credit or instalment amount can be arranged unless the creditor usually and customarily arranges or will arrange credit amounts or instalments for that period and in that amount; or

(2) That no downpayment or that a specified downpayment will be accepted in connection with any extension of credit, unless the creditor usually and customarily accepts or will accept downpayments in that amount.

(b) **Catalogs and multi-page advertisements.** If a catalog or other multiple-page advertisement sets forth or gives information in sufficient detail to permit determination of the disclosures required by this section in a table or schedule of credit terms, such catalog or multiple-page advertisement shall be considered a single advertisement provided:

(1) The table or schedule and the disclosures made therein are set forth clearly and conspicuously, and

(2) Any statement of credit terms appearing in any place other than in that table or schedule of credit terms clearly and conspicuously refers to the page or pages on

which that table or schedule appears, unless that statement discloses all of the credit terms required to be stated under this section. For the purpose of this subparagraph, cash price is not a credit term.

(c) **Advertising of open end credit.** No advertisement to aid, promote, or assist directly or indirectly the extension of open end credit may set forth any of the terms described in paragraph (a) of § 226.7, the Comparative Index of Credit Cost, or that no downpayment, a specified downpayment, or a specified periodic payment is required or any of the following items unless it also clearly and conspicuously sets forth all the following items in terminology prescribed under paragraph (b) of § 226.7.:

(1) An explanation of the time period, if any within which any credit extended may be paid without incurring a finance charge.

(2) The method of determining the balance upon which a finance charge may be imposed.

(3) The method of determining the amount of the finance charge, including the determination of any minimum, fixed, check service, transaction, activity, or similar charge, which may be imposed as a finance charge.

(4) Where one or more periodic rates may be used to compute the finance charge, each such rate, the range of balances to which it is applicable, and the corresponding annual percentage rate determined by multiplying the periodic rate by the number of periods in a year.

(5) The conditions under which any other charges may be imposed, and the method by which they will be determined.

(6) The minimum periodic payment required.